

73-1-11 Appurtenant water rights pass to grantee of land -- Exceptions -- Conveyance of a portion of irrigated land -- Right to the use of water evidenced by shares of stock -- Appurtenant water rights -- Evidence -- Where appurtenant -- Partial conveyances of water and land.

- (1)
 - (a) A water right appurtenant to land shall pass to the grantee of the land unless the grantor:
 - (i) specifically reserves the water right or any part of the water right in the land conveyance document;
 - (ii) conveys a part of the water right in the land conveyance document; or
 - (iii) conveys the water right in a separate conveyance document prior to or contemporaneously with the execution of the land conveyance document.
 - (b) If a county recorder records a document that conveys a water right appurtenant to land as described in Subsection (1)(a) and relies on the document to maintain a tract index described in Section 17-21-6, the state engineer shall rely on the document as an effective conveyance of a water right appurtenant to land.
- (2)
 - (a) If the water right has been exercised in irrigating different parcels of land at different times, it shall pass to the grantee of a parcel of land on which the water right was exercised next preceding the time the land conveyance was executed.
 - (b) Subsection (2)(a) applies only to land conveyances executed before May 4, 1998.
- (3) In any conveyance, the grantee assumes the obligation for any unpaid assessment.
- (4)
 - (a) The right to the use of water evidenced by shares of stock in a corporation is not a water right appurtenant to land.
 - (b) On or after May 14, 2013, unless provided otherwise in a corporation's articles of incorporation or bylaws, the right to the use of water evidenced by shares of stock in a corporation shall transfer only as provided in Subsection 73-1-10(2).
- (5)
 - (a) This Subsection (5) governs land conveyances executed on or after May 4, 1998, and has no retrospective operation.
 - (b) For purposes of land conveyances only, a water right evidenced by any of the following documents is appurtenant to land:
 - (i) a decree entered by a court;
 - (ii) a certificate issued under Section 73-3-17;
 - (iii) a diligence claim for surface or underground water filed pursuant to Section 73-5-13;
 - (iv) a water user's claim executed for general determination of water rights proceedings conducted pursuant to Title 73, Chapter 4, Determination of Water Rights, or pursuant to Section 73-3-16;
 - (v) an approval for an application to appropriate water issued under Section 73-3-10;
 - (vi) an approval for an application to permanently change the place of use of water issued under Section 73-3-10; or
 - (vii) an approval for an application to exchange water issued under Section 73-3-20.
 - (c) For purposes of land conveyances only, the land to which a water right is appurtenant is the authorized place of use of water as described in the:
 - (i) decree;
 - (ii) certificate;
 - (iii) diligence claim;
 - (iv) water user's claim;

- (v) approved application to appropriate water;
- (vi) approved application to permanently change the place of use of water; or
- (vii) approved exchange application.
- (d) If a grantor conveys part of the water right in a land conveyance document pursuant to Subsection (1)(b), the portion of the water right not conveyed is presumed to be reserved by the grantor.
- (e) If the land conveyed constitutes only a portion of the authorized place of use for the water right, the amount of the appurtenant water right that passes to the grantee shall be proportionate to the conveyed portion of the authorized place of use.
- (6) Beginning July 1, 2011, a deed conveying fee simple title to land may include a water rights addendum as provided in Section 57-3-109.

Amended by Chapter 363, 2013 General Session